

ORIGINAL

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Attorneys for Defendant
MERRILL LYNCH, PIERCE, FENNER & SMITH
INCORPORATED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MARK L. GRINGERI,

Plaintiff,

vs.

MERRILL LYNCH, PIERCE, FENNER &
SMITH INCORPORATED, PAT
WILLIAMS, and DOES 1 through 100,

Defendants.

CASE NO. **03453** HRL
**DECLARATION OF KATHERINE M.
FORSTER IN SUPPORT OF DEFENDANT
MERRILL LYNCH'S NOTICE OF
REMOVAL**

[Santa Clara County Superior Court Case No.
07CV090322]

I, Katherine M. Forster, hereby declare as follows:

1. I am a partner with the law firm of Munger, Tolles & Olson LLP, counsel of record in this case for Defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch" or "Defendant"). I am duly licensed and admitted to practice before the courts of California, and the U.S. District Court for the Northern District of California.

2. I have been involved in the defense of Defendant since the outset of this case and am familiar with most of the discovery and procedural history of this litigation. I have

**ADR
FILED**
JUL 17 2008
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
E-filing

1 personal knowledge of the facts stated herein from my involvement or from my review of the file,
2 and if called as a witness could and would testify competently thereto.

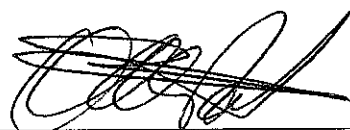
3 3. On July 10, 2008, I took the deposition of Plaintiff Mark L. Gringeri before
4 a certified court reporter. I have received an unofficial copy of the deposition transcript which
5 reflects Mr. Gringeri's testimony. Attached as Exhibit "A" to this declaration are copies of
6 portions of the transcript (except that relevant excerpts have been bracketed).

7 4. Attached as Exhibit "B" to this declaration is a copy of the document
8 identified as Exhibit 44 to Mr. Gringeri's deposition, which among other things sets forth his
9 earnings from his employment with Merrill Lynch during the one-year period from April 2005
10 through March 2006. This document is authenticated by Mr. Gringeri's testimony in the
11 deposition excerpts attached hereto as Exhibit "A."

12 5. I will lodge a copy of the certified transcript of Mr. Gringeri's deposition
13 with the Court upon my receipt from the court reporter.

14 I declare, under penalty of perjury, under the laws of the State of California and
15 the United States that the foregoing is true and correct.

16 Executed this 11 day of July 2008, at Los Angeles, California.

17
18
19 

KATHERINE M. FORSTER

2GRINGERI.txt

1 MS. FORSTER: Okay I'd like to Mark these pages
2 as an exhibit and I think we're up to 44.

3 (* Exhibit 44 was marked for
4 identification.)

5 MR. FINK: Were these Bates stamped?

6 MS. FORSTER: I believe the little numbers down
7 in the corner are the Bates stamps. There consistent
8 with Mr. Gringeri's--

9 MR. FINK: So this is ours?

10 MS. FORSTER: Yes, that's correct.

11 MR. FINK: Okay.

12 BY MS. FORSTER:

13 Q Have you had a chance to review exhibit 44?

14 A I have.

15 Q Do you recognize this?

16 A I do.

17 Q And what is Exhibit 44?

18 A Paperwork concerning employment --what do they
19 call it? Unemployment compensation.

20 Q The first page of exhibit 44 which bears Bates
21 No. 4 at the bottom mentions a telephone interview?

22 A Yes.

23 Q And did you participate in a telephone
24 interview?

25 A Yes.

32

2GRINGERI.txt

1 Q What was just the general substantial of that
2 discussion in that interview?

3 A I don't know specifically what this one was.
4 There were two or three contacts made during that season
5 that I was entitled to unemployment.

6 Q Okay. And do you recognize the handwriting at
7 the top of the page?

8 A I don't.

9 Q So that's not your handwriting?

10 A Could be.

11 Q Okay.

12 A Oh it is my handwriting.

13 Q Do you know what it says?

14 A And I believe -- they send you an e-mail or a
15 letter and you call in and you have to give them this
16 reference number so they make sure they're talking to the
17 right party.

18 Q Okay?

19 A So it may be a security or reference number for
20 the actual appointment.

21 Q Okay so that's what that is.

22 A Uh-huh.

23 Q All right. And then on the next page, Bates
24 Number five, is this requirement to register with Cal
25 jobs s that the item that's referred to in number 10 on

33

□

2GRINGERI.txt

1 Exhibit No. 43?

2 A Yeah, and it jogs my memory and Bates 4, because
3 they had you go through a lot of protocols in order to
4 keep your unemployment benefits, including going online
5 and registering at Cal jobs.com, which I wasn't aware of
6 and they said you had to do that.

7 Q Okay. And you did that?

8 A Yes, of course.

9 Q And then if you'd turn to the next page Bates
10 stamp Number 6. Does this paper reflect the unemployment
11 insurance award that you received?

12 A Yes.

13 Q And what was -- so you received \$450 per week;
14 is that correct?

15 A Yes.

16 Q And then the maximum benefit amount under No. 3
17 that is circled, what does that represent as far as you
18 understand?

19 A The total benefit I was going to get during this
20 whole program.

21 Q Okay.

22 A Between the two dates on the top two lines.

23 Q Okay. So would receive \$450 a week for the
24 period of time from 8-20-2006 and 8-18-2007 which
25 totals 11,000 \$700. Is that your understanding?

34

0

2GRINGERI.txt

1 A It does weekly benefit of 450 but that would put
2 it almost at two thousand dollars and it looks like the
3 benefits go for a whole year. I think it just runs out
4 at 11 seven and I get 450 every check.

5 Q Okay.

6 A It was a very unusual -- I had never done it
7 before and it was a little hard to keep track of.

8 Q Okay. So I think your best understanding at
9 least is that the 11 seven was a cap?

10 A Yes.

11 Q And did you in fact receive these unemployment
12 benefits?

13 A I did.

14 Q No. 8 on Bates Page six says you must look for
15 full-time work each week. Did you do that?

16 A Yes.

17 Q And under No. 11, Employee wages for the quarter
18 ending, and there's four different quarters listed.

19 A Yes.

20 Q Is that information that you provided to the
21 unemployment department?

22 A No.

23 Q Is the information in No. 11 accurate to the
24 best of your knowledge?

25 A Yes.

35

□

1 Q And the handwriting at the bottom is this your
Page 34

SOUTHWEST ADJUDICATION CENTER
P.O. BOX 80008
LOS ANGELES CA 90009-0008



*Sum Reference
70912*

SSN: 029-40-8710

|||||
MARK L GRINGERI
4861 BLUE RIDGE DR
SAN JOSE CA 95129-4306

TELEPHONE INTERVIEW NOTIFICATION AND INSTRUCTIONS

A telephone interview has been scheduled for you.

INTERVIEW INSTRUCTIONS: You will be called between 10:00 am and 12:00 pm, Pacific standard/daylight time at (408) 253-3703, on September 11, 2006.

This is the earliest possible appointment. If you cannot keep this appointment, you must call EDD **before** the day of the appointment to reschedule. If you are calling from within California, call one of the following numbers: English (800) 300-5616, Spanish (800) 326-8937, Cantonese (800) 547-3506, or Vietnamese (800) 547-2058. If you are calling from outside California but within the United States, Canada, Puerto Rico, or the Virgin Islands, call (800) 250-3913. The reason you cannot keep this appointment can affect your benefit payments. **Benefits cannot be paid until you are determined eligible and your continued claim form is received.**

You have the right to request more time if you need to get more information, contact witnesses, or obtain the advice of a representative.

If you are not available for the interview and have not contacted EDD to reschedule, a decision will be made based on available information. **This may result in denial of benefits.**

An employer may be contacted for more information, if needed.

- PLEASE READ INTERVIEW INSTRUCTIONS ON THE REVERSE -



Notice Date: 08/28/2006



MARK GRINGERI
4861 BLUE RIDGE DR
SAN JOSE, CA 95129-4306

(800) 300-5616

NOTICE OF REQUIREMENT TO REGISTER FOR WORK

Now that you have filed an unemployment insurance (UI) claim, the Employment Development Department (EDD) requires you to register for work by using CalJOBSSM, our Internet job finding system. When you filed your UI claim, the EDD started a pre-registration record for you.

You have **21 days from the date of this notice** to access CalJOBSSM to complete your registration information and add a résumé. If you have used CalJOBSSM in the past, you will need to update your registration information and add your most recent work history.

FAILURE TO REGISTER IN CALJOBSSM MAY AFFECT YOUR ELIGIBILITY TO RECEIVE UNEMPLOYMENT INSURANCE BENEFITS

In CalJOBSSM, you can create a quality résumé that can be seen by employers using the Internet. You can view and apply for a wide variety of job openings within your city or anywhere in California. You can set a *Job Scout* to automatically notify you by e-mail of new job openings that meet your objectives.

- CalJOBSSM is on the Internet at: **www.caljobs.ca.gov**. Use the convenience of your home or local library to log on and get started.
- If you do not have access to the Internet, or you feel you need assistance, you may call your local EDD Job Service office at the number below. **Ask to speak with the EDD Job Search Specialist.**

The address and telephone number of your local EDD Job Service office is:

**Campbell One-Stop
2450 S. Bascom Ave.
Campbell, CA 95008
(408) 369-3604**

California Law requires all job service applicants to provide documentary proof of legal status or authorization to work prior to receiving services. If you plan to complete your registration at a local EDD office you must bring the required documents. Enclosed is a brochure that lists acceptable documents.

EDD is an equal opportunity employer/program. Special request for alternate formats need to be made by calling the above number.

SAN DIEGO CALL CENTER
P.O. BOX 121015
CHULA VISTA CA 91912-4615



Mail Date: 08/30/2006
SSN: 029-40-8710

EDD Telephone Numbers:
English 1-800-300-5616
Spanish 1-800-326-8937
Cantonese 1-800-547-3506
Mandarin 1-866-303-0706
Vietnamese 1-800-547-2058
TTY 1-800-815-9387
Outside California 1-800-250-3913

|||||
MARK L GRINGERI
4861 BLUE RIDGE DR
SAN JOSE CA 95129-4306

NOTICE OF UNEMPLOYMENT INSURANCE AWARD

1. Claim Beginning Date: 08/20/2006
2. Claim Ending Date: 08/18/2007
3. Maximum Benefit Amount: \$11700
4. Weekly Benefit Amount: \$450
5. Total Wages: 171,235.21
6. Highest Quarter Earnings: 95,192.18
7. This item does not apply to your claim.
8. You must look for full time work each week. Please see your handbook, A Guide to Benefits and Employment Services, DE1275A, for more information about looking for work.
9. This item does not apply to your claim.

10. Employee Name	11. Employee Wages for the Quarter Ending:	12. Employer Name
	JUN. 2005 SEP. 2005 DEC. 2005 MAR. 2006	
M GRINGE	25,096.27 28,659.59 22,287.17 95,192.18	MERRILL LY
13. Totals:	25,096.27 28,659.59 22,287.17 95,192.18	

Ref # 84463

Nov 13 12

Important Information On The Reverse Of This Form

DE429/z/ Rev. 2 (7-04)

REDACTED

CONFIDENTIAL

CU-PA343
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SOUTHWEST ADJUDICATION CENTER
P.O. BOX 80008
LOS ANGELES CA 90009-0008



Mail Date: August 28, 2006
SSA No.: 029-40-8710

|||||
MARK GRINGERI
4861 BLUE RIDGE DR
SAN JOSE CA 95129-4306

EDD TELEPHONE NUMBERS:

ENGLISH	1-800-300-5616
SPANISH	1-800-326-8937
CANTONESE	1-800-547-3506
MANDARIN	1-866-303-0706
VIETNAMESE	1-800-547-2058
TTY (Non-Voice)	1-800-815-9387

REEMPLOYMENT AND ELIGIBILITY ASSESSMENT APPOINTMENT NOTICE

**FAILURE TO ATTEND THIS APPOINTMENT MAY AFFECT YOUR ELIGIBILITY TO
RECEIVE UNEMPLOYMENT INSURANCE BENEFITS**

You have been scheduled to attend a Reemployment and Eligibility Assessment (REA) Interview. During this interview, the Department will review your efforts to seek work and provide information on appropriate services to assist you in returning to work as quickly as possible. Included is a Reemployment And Eligibility Assessment Questionnaire. You must bring this questionnaire completed to the interview. The Questionnaire includes a section titled, Work Search Questionnaire, where you must list your efforts to seek work for the two weeks prior to your appointment.

Your appointment cannot be rescheduled. If you are unable to keep your appointment or are scheduled for a telephone interview during the **same** time as this appointment, call EDD at one of the toll free numbers listed above to discuss your eligibility. **Failure to attend this appointment may affect your eligibility to receive unemployment insurance benefits.**

During your appointment, you will have the opportunity to:

- Discuss your work search efforts;
- Receive labor market information specific to your job search and occupation;
- Learn about available resources and tools you can use in your work search;
- Learn about re-employment and re-training services available.

Reminder: You must add or update a resume in the Department's CalJOBSSM Internet job finding system prior to the appointment. You can access CalJOBSSM at www.caljobs.ca.gov using any computer connected to the Internet. If you do not have access to the Internet, Internet access is available on computers at the EDD office address listed below.

FAILURE TO REGISTER IN CalJOBSSM MAY AFFECT YOUR ELIGIBILITY TO RECEIVE UNEMPLOYMENT INSURANCE BENEFITS.

If you receive other forms from the Department you must complete and mail the forms as instructed.

Your Reemployment and Eligibility Assessment Appointment is on:

DATE 09/12/2006 TIME 11:15 AM

LOCATION OF YOUR APPOINTMENT IS:

**CAMPBELL ONE-STOP
2450 S. BASCOM AVE.
CAMPBELL CA 95008**

California law requires that all applicants for job services must provide documentary proof of legal status and authorization to work prior to receiving services. On the reverse is the list of acceptable documents. You must bring your documents to the interview.

SAN DIEGO CALL CENTER
P.O. BOX 121015
CHULA VISTA CA 91912-4615



Mail Date: 08/30/2006
SSN: 029-40-8710
Claimant Phone #: 408-253-3703

|||||
MARK L GRINGERI
4861 BLUE RIDGE DR
SAN JOSE CA 95129-4306

EDD Telephone Numbers:
English 1-800-300-5616
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Cantonese 1-800-547-3506
Mandarin 1-866-303-0706
Vietnamese 1-800-547-2058
TTY 1-800-815-9387
Outside California
1-800-250-3913

NOTICE OF UNEMPLOYMENT INSURANCE CLAIM FILED

You filed a claim for Unemployment Insurance benefits effective 08/20/2006
When you filed your claim you stated:

1. Your last employer was: MERRILL LYNCH
5300 STEVENS CREEK BLVD
SAN JOSE CA 95129-1032
2. The last day you worked for that employer was 08/22/2006.
3. The reason you are no longer working for the above employer is:
I HAD A FALLING OUT WITH THE COMPANY AND STILL DON'T KNOW WHY. (ALLEGED H
R VIOLATIONS.)
4. You are not receiving a pension or other income.
5. You are able and available to accept full time work.
6. You have the legal right to work in the United States.

Please check the above information carefully. EDD will consider this information correct unless you report other information within (ten) 10 days from the mailing date of this notice. Any response after 10 days may result in delay of benefits. Remember to include your name and Social Security Number in all correspondence with EDD. Mail your response to the EDD address above or you may call EDD.

Although federal and state laws prohibit the revealing of information about your employment and your UI claim to your spouse, relatives, friends, non-interested parties, and private interest groups, federal legislation requires that such information be made available to state and federal Welfare, Medical Assistance, Food Stamps, Housing, and Child Support Enforcement agencies. Confidentiality is the responsibility of all agencies using the information.